Supreme Court, U.S.
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No. 01-1377

In The

Supreme Court of the United States

UNITED PAPERWORKERS
INTERNATIONAL UNION, Local 1737,

Petitioner,

v.

INLAND PAPERBOARD AND
PACKAGING, INC.,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

RESPONDENT'S BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. R. 29(6), Respondent, Inland Paperboard and Packaging, Inc., makes the following disclosure:

Temple Inland Inc., a publicly-held company, is the parent corporation of Inland Paperboard and Packaging, Inc. No other publicly-held company owns ten percent or more of Inland Paperboard and Packaging, Inc.'s stock.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Inland Paperboard and Packaging, Inc. ("Inland"), respectfully requests that the Court deny the Petition for a Writ of Certiorari seeking review of the December 21, 2001 Opinion of the United States Court of Appeals for the Sixth Circuit.

STATEMENT OF THE CASE[1]

Inland produces corrugated boxes at its Louisville, Kentucky plant, which typically operates five days a week, with three shifts each day. The production and maintenance employees at the plant are represented by the Petitioner, Paper, Allied-Industrial, Chemical & Energy Workers Union, Local 1737 (the "Union").

William Anderson, a Union member, was employed as a slitterman at Inland. He worked on the corrugator, which produces sheets of corrugated board. The corrugator is a single machine that feeds all the other production machinery in the plant. The slitterman is responsible for the knife and slitting operation, which must run continuously or the entire plant will go down. Slittermen work significant amounts of overtime.[2]

In October 1996, Anderson injured his left foot in a motorcycle accident. After a leave of absence, he returned

[1] Inland's statement of the case contains the facts as found by the arbitrator [Arbitrator's Op., App. D to Petition].

[2] Under the collective bargaining agreement between Inland and the Union (the "Contract"), Inland can require its employees to work overtime.

to work in March 1997, with the limitation that he could not work more than eight hours per day. Janet Smith, Inland's Human Resources Manager, told Anderson that Inland could accommodate his eight-hour limitation in the slitterman job on a temporary basis. Anderson's doctor was supposed to determine whether the eight-hour restriction was permanent in September 1997.

Before that happened, Anderson was injured in another motorcycle accident in August 1997. Because of his injuries, Anderson was placed on a medical leave of absence.[3] In December 1997, while Anderson was on leave, Kelly Wexler, Inland's Production Manager, and Janet Smith, discussed Anderson's situation with him and jobs he might be able to do, including the forklift job and the clamp truck job. Anderson claimed he could not do those jobs and refused to consider them.

In July 1998, Anderson's doctor released him to return to work with the restriction that he could work for only eight hours per day. Anderson wanted to return to

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[3] The Contract provides that

> [e]mployees will be granted leaves of absence for personal . . . accident upon request (written application not required) up to a total period of one (1) year, provided that the employee must submit to periodic medical examinations or submit medical statements as requested by the Employer. An employee will return to work from a leave of absence for personal . . . accident when it is permissible on the basis of medical evidence in conformance with other provisions of the contract.

[Dist. Ct. Op. (July 19, 2000), App. C to Petition 19a n.4].

work only as a slitterman, a position that requires substantial amounts of overtime and that is essential to the operation of the plant because of production needs. Anderson did not request any other position, claim an open job within his limitations, or ask the Union and Inland to agree on a job he could perform, as he could have done under Article XIII, section 8 of the Contract, which provides that

> [e]mployees unable to perform arduous work because of physical disability may claim such open jobs as they are able to perform, provided they furnish a doctor's certificate of substantial disability. In the event no such job is available, such employee may request the bargaining committee and the management to find him a job.

[Dist. Ct. Op. (July 19, 2000), App. C to Petition 20a n.5; Arbitrator's Op., App. D to Petition 35a]. On or about August 6, 1998, Anderson's leave of absence expired, and his employment was terminated in accordance with the Contract for failure to return to work.

On August 28, 1998, the Union filed a grievance on Anderson's behalf, alleging that Anderson's employment had been terminated without proper cause. After considering the evidence and the briefs presented by the Union and Inland, the arbitrator denied the grievance [Arbitrator's Op., App. D to Petition 36a]. The arbitrator found that Anderson could have avoided termination of his employment simply by requesting that the bargaining committee and management find him a job as permitted by the Contract [Arbitrator's Op., App. D to Petition 36a]. He rejected the Union's argument that Paragraph 14 of

the Louisville Supplement to the Contract, which provides a method for filling overtime assignments that cannot be worked by employees because of physical disabilities substantiated by medical certification, required Inland to return Anderson to work in the slitterman job with an eight-hour per day restriction [Arbitrator's Op., App. D to Petition 35a].

The District Court disagreed with the arbitrator's interpretation of the Contract and reversed the arbitrator's award [Dist. Ct. Op. (July 19, 2000), App. C to Petition 18a]. The District Court concluded that because Paragraph 14 of the Louisville Supplement to the Contract provides a method for filling overtime assignments that cannot be worked by employees with physical disabilities, Anderson was entitled to return to work in the slitterman job with a permanent eight-hour per day restriction [Dist. Ct. Op. (July 19, 2000), App. C to Petition 22a]. In doing so, the District Court ignored both Paragraph 4 of the Louisville Supplement, under which Inland can require employees to work overtime, and the arbitrator's finding that overtime was an essential requirement of the slitterman job. The District Court also relied upon a provision of the Contract that the Union did not rely on before the arbitrator, Article XIII, section 7 of the Contract, for the proposition that Anderson was entitled to return to the slitterman job [Dist. Ct. Op. (July 19, 2000), App. C to Petition 23a]. Article XIII, section 7 is a seniority provision that states that an employee who returns from a leave of absence shall return to his old job [Dist. Ct. Op. (July 19, 2000), App. C to Petition 22a]. The District Court refused to modify its position upon

Inland's Motion to Alter, Amend, or Vacate [Dist. Ct. Op. (Sept. 12, 2000), App. B to Petition 10a].

The United States Court of Appeals for the Sixth Circuit reversed the District Court's decision [Ct. of Appeals Op., App. A to Petition 8a]. The Court of Appeals held that the arbitrator's award drew its essence from the Contract and that the arbitrator acted within the scope of his authority under the Contract [Ct. of Appeals Op., App. A to Petition 6a]. Although the Contract is susceptible to different interpretations, because the arbitrator "properly analyzed various contract provisions and came to a rational interpretation of the [Contract] as applied to the facts," the Court of Appeals held that the arbitrator's award should be reinstated [Ct. of Appeals Op., App. A to Petition 8a].

REASONS TO DENY WRIT

Review on a writ of certiorari is a matter purely of judicial discretion, to be granted only for the most compelling reasons. *See* S. Ct. R. 10. "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.* The Union asserts only that the Court of Appeals misapplied a properly stated rule of law by failing to consider an applicable Contract provision and holding that the arbitrator's decision should be reinstated. The Union presents no question that requires this Court's attention. Moreover, the Court of Appeals's decision fully comports with this

Court's prior decisions. The Union's Petition for a Writ of Certiorari should be denied.

I. THE PETITION DOES NOT PRESENT ANY QUESTION THAT SHOULD BE CONSIDERED BY THIS COURT.

The Union has not presented any question that this Court should consider. Last year, the Court reaffirmed the law regarding the "very limited" review of an arbitrator's construction of a collective bargaining agreement in *Major League Baseball Players Association v. Garvey*, 121 S. Ct. 1724, 1728 (2001). Only two years ago, in *Eastern Associated Coal Corporation v. United Mine Workers*, 531 U.S. 57 (2000), this Court restated the well-settled rule that a reviewing court may "set aside the arbitrator's interpretation of what [the parties'] agreement means only in rare instances." *Id.* at 62. The Union's Petition presents no reason to revisit this area of law once again. The Union does not argue that the Court of Appeals misstated the law. It argues only that the Court of Appeals misapplied the law. Even if that were true, there is no compelling reason to grant the Union's Petition.

II. THE COURT OF APPEALS CORRECTLY ORDERED THAT THE ARBITRATOR'S AWARD BE REINSTATED AS REQUIRED BY *PAPERWORKERS V. MISCO, INC.*

The Union's petition should not be granted because the Court of Appeals's decision comports with *Paperworkers v. Misco, Inc.*, 484 U.S. 29 (1987), and its progeny. Taking its guidance from this Court, the Court of Appeals

correctly recognized that when parties have bargained for an arbitrator's construction of a collective bargaining agreement, " '[i]f an arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,' the fact that 'a court is convinced he committed serious error does not suffice to overturn his decision.' " *Major League Baseball Players Ass'n v. Garvey*, 121 S. Ct. 1724, 1728 (2001) (quoting *Eastern Assoc. Coal Corp. v. United Mine Workers*, 531 U.S. 57, 62 (2000) (quoting *Paperworkers v. Misco, Inc.*, 484 U.S. 29, 38 (1987))).

In this case, the Court of Appeals carefully examined the arbitrator's decision and properly determined that his conclusion that Inland had just cause to terminate Anderson's employment was consistent with the Contract. The Court of Appeals accepted the arbitrator's factual findings and decided that the "arbitrator properly analyzed various contract provisions and came to a rational interpretation of the [Contract] as applied to the facts" [Ct. of Appeals Op., App. A to Petition 7a]. The Union's preference for an interpretation of Paragraph 14 of the Louisville Supplement that would entitle Anderson to the slitterman position without reference to any other Contract provision does not constitute grounds to overturn the arbitrator's decision. Paragraph 14 merely outlines a procedure for filling overtime assignments. It does not exempt any job, including slitterman, from overtime requirements or give Anderson any right to the slitterman position.

Contrary to the Union's assertion that the arbitrator "failed to deal with" Paragraph 14 of the Louisville Supplement [Petition 5], the arbitrator considered the Union's proferred interpretation of Paragraph 14 and

expressly rejected it. "I find that neither of these two contractual provisions [Article XIII, section 8 and Paragraph 14 of the Louisville Supplement] supports [Anderson's] claim to the job of a slitterman with a permanent eight hour restriction" [Arbitrator's Op., App. D to Petition 35a]. The arbitrator reasonably concluded that no Contract provision guaranteed Anderson, who was seeking to return to work with a claimed disability, the slitterman position and that Anderson's situation was governed by Article XIII, section 8 of the Contract, which permitted Anderson to claim an open job within his limitations or to ask the Union and Inland to find him a job. Because the parties bargained for an arbitrator's interpretation of the Contract and because the arbitrator's interpretation draws its essence from the Contract, the Court of Appeals correctly remanded the case for reinstatement of the arbitrator's award.

CONCLUSION

Accordingly, Inland respectfully requests that the Court deny the Petition.

Respectfully submitted,

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